



KERALA REAL ESTATE REGULATORY AUTHORITY
THIRUVANANTHAPURAM
Complaint No. 178/2023

Present: Sri. P H Kurian, Chairman
Smt. Preetha P Menon, Member

Dated 27th May 2024

Complainant

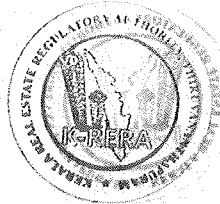
Suresh Babu M K & Haseena S K
Koyikkal House, Kulasekharamangalam P O
Vaikom, Kottayam, Kerala- 696608

[By Adv. Rajasekharan Nair]

Respondents

1. M/s Galaxy Homes Pvt Ltd,
Galaxy Square,
Rajaji Road Junction, M G Road,
Karithala Desom, Ernakulam, Pin - 682035
2. P A Jinas, The Proprietor,
Galaxy Developers, Galaxy Square,
Rajaji Road Junction, M G Road,
Karithala Desom, Ernakulam, Pin – 682035

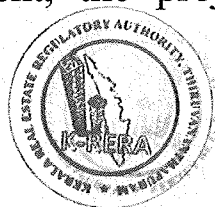
The above Complaint came up for virtual hearing. The counsel for the Complainant and the counsel for the Respondents attended the hearing.



ORDER

1. The facts of the case are as follows: - The Complainant is an allottee in the project, "Galaxy Pine Courts" developed by the Respondents. The Complainant had booked a flat in Galaxy Pine Court Block I, Kakkanad, Ernakulam for which two agreements were executed with the Respondent, one for the construction of a three-bedroom Apartment, marked as F-8, having a built-up area of 928 sq. ft together with a covered car parking on the first floor of the car parking block and the other for the sale of undivided share of land in the 135.925 cents of schedule property. The total cost of the apartment and land was Rs. 24,37,645/-.

2. As per agreements, the project was "Multi-storied buildings called Galaxy Pine Court Block I, II, III and car parking block in the property having an extent of 135.925 cents with residential Apartments, common areas, common amenities such as 6 automatic Lift, Swimming pool, health club, Intercom connection with security cabin, Mini Auditorium with Indoor Game facility, Children's play area, Landscaped Garden, Modern fire fighting equipment, Common Toilet for Drivers and housemaid, Automated Generator Back up for Lift & Common area, 24-hour security, Rainwater harvesting and, sewage treatment plant. Thereafter, the Complainant complied with all conditions including timely and prompt payment as per schedule. As per the construction agreement, the project was to be completed on



30.04.2016 and had to be handed over within 180 days. But the project was pulling on at a very slow pace, far behind schedule, from the very beginning and at times halted. The Complainant made regular and repeated follow ups with the Respondent for timely completion, but all in vain. As of March 2018, only the structure of Block I was completed when the Respondents issued the so-called final bill dated 29.03.2018. Later on demand, the Complainant paid the balance amount for registration & statutory charges and all final charges/bills. As on 10.12.2019 a total amount of Rs. 29,98,321/- was paid by the Complainant. Later, after the intervention of the Authority, in a deliberate manipulation, the Respondents registered the project as Galaxy Pine Court Block I, whereas the sale agreement and sale deed with allottees, specifically record the property as a multi-storied buildings called Galaxy Pine Court block I, II, III & Car Parking Block having an extent of 135.925 cents consisting of residential blocks known as Galaxy Pine Court Block I,II,III with residential apartments, common areas and amenities and separate Car Parking block in two floors. The permit submitted to the Authority pertains to all four blocks and the entire land of 135.925 cents as a single unit and project. When the first block was partially finished, the Respondents stopped all works as if the project was completed. They managed to get an occupancy certificate for Block I, from the local authority, in March 2021. Further the Respondents uploaded a false statement in Form No. 6 as to the Completion of the project.



The Respondents are trying to run away from their responsibility by hook or crook. As regards to present condition of the flat, the interior painting is partial and the exterior painting has not been done. The car parking and common amenities are distant dreams that are planned in the car parking block and the other two blocks that are yet to be launched except for a skeleton structure of block II. Thus, a major part of the project is yet to be completed. Works on the common area, amenities, and car parking block are yet to begin. The flat was a dream plan of the Complainants and wished to have a shelter for his family which was expected to be realized in the year 2016. Now, as a result of aforesaid breaches and contraventions committed by the Respondents, the Complainant suffered huge loss, injury, damages and mental agony. The reliefs sought by the Complainants are to (i) Issue appropriate orders to the Respondents to complete the flat in all respects as per agreement and hand over possession at the earliest (ii) Interest for delayed completion and handing over of flat at the rate applicable from the date of promised handing over as per agreement, till completion of flat and realization of interest as per Sec.18 of the Act. The Complainants have produced the copies of the sale agreements, construction agreement, final bill and the payment vouchers.

3. The Respondents did not file any counter statement in this Complaint or produced any documents from their side.



4. Heard both parties of the above complaint in detail. The documents produced from the part of the Complainants are marked as Exbts.A1 to A4. The Respondents did not file any documents. Later on, as directed by this Authority during the final stage of hearing, the Respondents submitted an affidavit with respect to the completion of the project within a time period and it is marked as Exhibit B1. After hearing the counsels on either side and perusing the pleadings and documents placed on record, the following points are being considered and decided herewith:

- 1) Whether the Respondents/Promoters failed to complete or were unable to hand over possession of the apartment to the Complainants, with all the common amenities and facilities, in accordance with the terms of the agreement or duly completed by the date specified therein or not?
- 2) Whether the Complainants herein are entitled to get interest for delay in completion and handing over possession of the apartment as provided under Section 18(1) of the Act, 2016 or not?

5. **Points No. 1&2:-**The project is registered as “Galaxy Pine Court Block-I” before this Authority as per Section 3 of the Real Estate (Regulation & Development) Act 2016 [hereinafter referred to as the “Act 2016”] in which the proposed date of completion was shown as 22/08/2022. On perusal of the web page concerned, it is seen that the Respondents have uploaded a partial



occupancy certificate dated 15.03.2021 obtained for “Galaxy Pine Court Block-I” and Fire NOC dated 18.02.2021. They have also uploaded Form-6 showing completion of this project. While examining the registration records, it could be seen that the Respondents/Promoters had obtained approval /permit from the local authority for the whole project conceived by them as “Galaxy Pine Court” in 55.01 Ares of land, comprising of 3 residential Blocks/buildings of 15 floors each and also a separate Car parking block with 2 floors. But the registration as per Section 3 of the Act 2016 has been taken only for Block-I for which the abovementioned ‘Partial’ Occupancy Certificate was issued by the local authority.

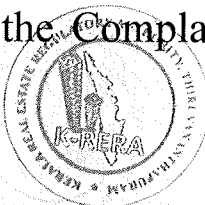
7. The documents produced by the Complainants are marked as Exhibits A1 to A4. **Exhibit A1** is the sale executed by the Respondent No.1 company represented by Respondent No 2 in favour of the Complainants. **Exhibit A2** is the construction agreement dated 28.01.2014 executed between the Complainants and the 1st Respondent company represented by Executive Director for constructing a three-bedroom apartment having a built-up area of 928 sq. ft on the eighth floor in the said project for a construction cost of Rs. 23,30,733/- in which the promised date of completion is shown as 30.04.2016 with 180 days grace period. **Exhibit A3** is the copy of the final bill. **Exhibit A4** series is the copies of the receipts of payment made by the Complainant to the Respondents. The Respondents have submitted an affidavit dated 24/10/2023



with respect to completion of the whole project which is marked as **Exhibit B1**.

8. The Authority issued a common order dated 11/04/2022 in Complaints No. 218/20 & 173/21 filed by 2 allottees of the same project, directing the Respondents herein to complete and handover the respective apartments of the said Complainants and also to pay the interest for delay in handing over their apartments. When the above complaint came up for initial hearing, it was found that the Respondents/Promoter did not complete the Project so far, as promised as per the terms of agreements executed between the Respondents and the allottees including the Complainants herein and as directed by the Authority in the order aforementioned. It was also submitted by the parties that though an Association of allottees were formed by the allottees themselves, the common amenities/common area or the documents pertaining to the project were not handed over by the Respondents/Promoters to the Association, as mandated under the law.

9. In this Complaint, as per the agreement executed with the Complainants herein, which is marked as Exbt.A2, the Respondents/Promoters have assured that “the construction will be completed on or before 30/04/2016 and possession will be handed over within 180 days from the date of paying the entire consideration”. But here, the possession has not been handed over even after receiving the Occupancy Certificate dated 15.03.2021. The learned counsel for the Complainants also alleged that the



Respondents had not taken any initiative to form an Association of allottees and hence the allottees formed one. However, the Respondents have not transferred the common area/amenities or the documents related to the project to the Association so far as stipulated under the law. As per Section 11(4)(e) of the Act 2016, it is the duty of the Promoter to enable the formation of an Association of allottees within a period of 3 months of the majority of allottees having booked their apartments in the project. Moreover, Section 11(4) (f) stipulates that the Promoter “*shall execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act.*” and Section 17 of the Act specifies as follows: “*conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate. After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to hand- over the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and*



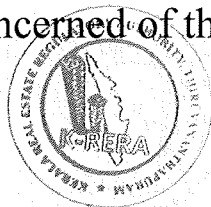
plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate".

10. It is noticed that as per the terms of Exbt. A2 agreement, the Respondents/Promoter had promised to give the Complainants several amenities such as Car Parking building, drinking water from connection of Kerala water Authority, swimming pool, Health club, Mini Auditorium with indoor game facility, Children's Play area, Landscaped Garden, Firefighting equipment, automated generator backup for life, Rainwater harvesting, sewage treatment plant etc. in the project. But such amenities are still distant dreams according to the Complainants. The Respondents/Promoter himself reveals in Exhibit B1 affidavit dated 24/10/2023, that there are more works to be completed in the project. Hence, it can be found that the Respondents herein have gravely failed to give possession of the apartment and complete the project along with common amenities, as promised in the Exbt. A2 agreement, as alleged by the Complainant. While passing judgement in *Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd.*, the Hon'ble Supreme Court had done certain important observations on the same aspect as follows: "*The Developers sell dreams to home buyers. Implicit in their representations is that the facilities which will be developed by the developer will provide convenience of living and a certain lifestyle based on the existence of those amenities. Having sold the flats, the developer may find it economically unviable to provide the amenities. The flat purchasers cannot be left in the*



lurch or, as in the present case, be told that the absence of facilities which were to be provided by the developer is compensated by other amenities which are available in the area. The developer must be held accountable for its representation. A flat purchaser who invests in a flat does so on an assessment of its potential. The amenities which the builder has committed to provide impinge on the quality of life for the families of purchasers and the potential for appreciation in the value of the flat. The representation held out by the developer cannot be dismissed as chaff". In these circumstances, the arguments of the Respondent's counsel that "the apartment was completed earlier, but possession was not handed over due to non-payment by the Complainants" etc. is not at all sustainable legally because what the Respondents/promoters are bound by the law as well as the contract is to complete the entire project along with all the amenities and facilities promised to each and every allottee including the Complainants and hence, after completing the whole project as mentioned above and after obtaining all the sanctions and approvals prescribed under the laws concerned, the Respondents/Promoter would have handed over the common area and documents pertaining to the project to the Association of allottees formed and registered as per the law. Here, the Respondents have not produced any documents to show that they had already handed over the project as mentioned above, to the Association of Allottees.

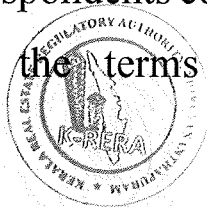
11. While considering the claim of the Complainants for the interest for delay in handing over possession, we have to revisit the provisions concerned of the Act 2016, in which Section



18(1) of the Act 2016 lays down that: “If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act-Provided that where the allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.” It is apparent that Section 18(1) of the Act, 2016 applies only in cases where the promoter fails to complete or is unable to give possession of an apartment, plot, or building in accordance with the terms of the agreement for sale duly completed by the date specified therein. Moreover, Section 18 (1) of the Act, 2016 clearly provides two options to the allottees viz. (1) either to withdraw from the project and seek refund of the amount paid with interest and compensation (2) or to continue with the project and seek interest for delay till handing over of possession. Here, the Complainants has opted to continue with the project and claimed interest for delay in handing over possession of the apartment to him.



12. As per the Exbt. A2 agreement, Clause No. 5 states that *“The First party shall construct the apartment as per the specifications attached hereto and try the utmost possible to finish the work on or before the 30th day of April, 2016 provided the entire amount due to the First Party from the Second Party including statutory charges has been paid by the Second Party. Possession will be handed over within 180 days from the date of paying the entire consideration including statutory charges.”* Exhibit. A2 agreement is seen executed by the complainants and the Respondent No. 1 company represented by Executive Director on 28.01.2014 as per which the promised date of completion and handing over was on 30.04.2016 with a grace period of 180 days. According to the learned counsel appeared for the Complainants, the Respondents have not handed over possession of the apartment so far to the Complainants. It is admitted by the Respondents that the Occupancy Certificate has been obtained for the project only on 15.03.2021. According to the Respondents, they have handed over possession to the Complainants immediately upon receiving the balance amounts from the Complainants, but no documents have been produced proving the same. The Respondents have also submitted an affidavit dated 24.10.2023 marked as Exhibit B1 and submitted that the project is not completed and needs some more time to complete and hand over the whole project. As it is evident from the records that the Respondents could not complete and hand over possession as per the terms of the agreement, the



Complainants herein are eligible to get interest for every month of delay as per the proviso to Section 18(1) of the Act, 2016. We would reproduce herein below, certain remarkable observations made in this regard by the Hon'ble Supreme Court of India in its Judgement dated 11/11/2021 of M/s Newtech Promoters and Developers Pvt. Ltd Vs State of UP & Others: “ *If the Promoter fails to give possession of the apartment plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/homebuyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed*”.

13. Here, the learned counsel for the Respondents mainly raised arguments that the completion date was subject to the performance from the part of the Complainants but the Complainants failed to perform by making delay in the payments as per the agreement and hence delay in the progress of works will not constitute a breach on the part of the promoter. He also argued that a person raising the claim of breach of contract should have come with clean hands, by performing his part of the agreement, but the Complainants herein had violated the terms of the



agreement when he failed to pay monthly instalments. Anyhow, examining Exhibit A4 series reveals that the Complainants had made most of the payments before the promised completion date. With regard to the contentions raised by the Counsel for the Respondents/Promoter that there was failure from the part of the Complainants in paying instalments on time, no documents/communications produced from the side of the Respondents to substantiate this contention and moreover the Respondents could have sent notice of cancellation of booking to the Complainants at the time of the alleged delay in making payments, by invoking provisions under Section 19(5) and (6) of the Act, 2016 and under Clause 9.3 of 'Annexure 'A' Agreement for sale' under Rule 10 of the Kerala Real Estate (Regulation and Development) Rules, 2018. Exbt B1 affidavit also discloses that the Respondents could not complete and hand over the apartment on time as promised as per the agreement. It has been assured through the affidavit that the works with regard to the amenities such as swimming pool, sewage treatment plant, children's play area etc will be completed and handed over within six months. In view of this, the Respondents have no right to shift the burden on the shoulders of the Complainants by alleging any delay/irregularity in his payments. Nevertheless, the Respondents, being promoters of such a project, cannot run away from their obligations with respect to completion of the whole project with all the amenities and facilities simply by blaming one of the



allottees because they are accountable to all the prompt paying allottees also in the project. Here, the promised date of completion and handing over was 30-04-2016, but possession of the apartment has not been handed over even after receiving the Occupancy Certificate. It can be seen that the delay in final payments occurred due to the non-completion of work as promised by the Respondents/Promoter. Even if the Complainants/allottee had made delay in any of the payment of instalments, the Promoter has undoubtedly made use of the investments of the Complainant's hard-earned money for the past years and failed to complete the work and hand over possession as per the term of the agreement.

14. It was observed by the Hon'ble Supreme Court in its judgement Wg. Cdr. Arifur Rahman Khan & others vs Dlf Southern Homes Pvt. Ltd., as follows: "*Judicial notice ought to be taken of the fact that a flat purchaser who is left in the lurch as a result of the failure of the developer to provide possession within the contractually stipulated date suffers consequences in terms of agony and hardship, not the least of which is financial in nature. The amount of interest represents compensation to the beneficiaries who are deprived of the use of the investment which has been made and will take into its ambit the consequence of a delay in not handing over possession.*"

15. In view of the facts and findings discussed in the foregoing paragraphs, it has been revealed beyond doubt that the Respondents/Promoters have failed to complete and hand over



possession of the apartment as promised to the Complainants herein and hence the Complainants are entitled to get interest for delay in handing over possession as provided under Section 18(1) of the Act 2016. Points No. 1 & 2 are answered accordingly in favour of the Complainants.

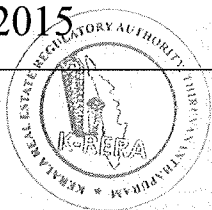
16. The Complainants herein have claimed interest for the delayed completion and handing over of possession of the apartment from the promised date of completion and delivery of the flat to the Complainants, till the actual date of completion and handing over possession of flat and the project with all facilities and amenities. As the Respondents had not yet handed over the flats, the Complainants herein are eligible to get interest from the promised date of handing over as per the agreement till the actual date of handing over possession to him. With respect to the completion of the common amenities offered as per the agreements executed with the Complainants and also with regard to other obligations as mandated by this law as Promoter, the Respondents herein cannot repudiate the terms of the contract entered into with the Complainants. Section 18(3) of the Act, 2016 deals with the right of the allottee to get compensation "in case the Promoter fails to discharge any other obligations imposed on him under this Act, Rules or Regulations made thereunder or in accordance with the terms and conditions of the agreement for sale.

17. In the instant case, the Complainants had remitted Rs. **29,33,721/-** to the Respondents which is supported



by Exbt A4 series documents. The said documents reveal that the Complainants had paid an amount of Rs.21,48,482/- before the promised date of completion, i.e. on 30.04.2016. As the Respondents/ Promoters are defaulters, they are not entitled to get the benefit of grace period mentioned in the Exhibit A2 agreement. The respective dates of payments and amounts in total are as follows:

Date	Amount in Rs.
07.01.2014	25,000/-
24.01.2014	7,25,000/-
04.03.2014	64,600/-
05.04.2014	64,600/-
05.05.2014	64,600/-
01.08.2014	64,600/-
05.06.2014	64,600/-
04.09.2014	64,600/-
08.08.2014	64,600/-
07.10.2014	64,600/-
05.11.2014	64,600/-
01.12.2014	64,600/-
03.01.2015	64,600/-
03.02.2015	64,600/-
10.04.2015	64,600/-
30.04.2015	64,600/-



03.06.2015	64,600/-
03.09.2015	64,600/-
29.07.2015	64,600/-
02.10.2015	64,600/-
29.10.2015	64,600/-
03.12.2015	64,600/-
03.12.2015	1,06,482/-
07.05.2016	1,60,000/-
06.08.2019	4,46,387/-
06.08.2019	93,613/-
10.12.2019	85,239/-
Total	29,33,721/-

18. As the Complainants are found entitled to get interest for the delayed handing over of possession, the Respondents are liable to pay interest to the Complainants as per the proviso to Section 18(1) of the Act, 2016. Hence the Complainants are entitled to get interest for the period from 01/05/2016, the promised date for handing over till the date of handing over possession, on Rs. 21,48,482/- which is the amount paid by them before the promised date of completion and also, they are entitled to get interest from the date of payment of each amount, as shown in the table inserted above, paid after the promised date of handing over till the actual date of handing over possession of the apartment. As per Rule 18 of Kerala Real Estate



(Regulation & Development) Rules 2018, the rate of interest payable by the Promoter shall be State Bank of India's Benchmark Prime Lending Rate Plus Two Percent and shall be computed as simple interest. The present SBI BPLR rate is 15.00 % with effect from 15/12/2023. Hence, it is found that the Respondents are liable to pay interest on the amounts paid as mentioned above @ 17 % [15% (current BPLR rate) +2%].

19. On the basis of the above detailed facts and circumstances of the case and Exhibit B1 Affidavit submitted by the Respondents/Promoter with respect to completion of the pending works, this Authority by invoking Section 37 of the Real Estate (Regulation & Development) Act, 2016, directs the Respondents in the following manner:

1) The Respondents No.1 & 2/Promoters shall complete the pending works, with respect to the Apartment No. F-8 in 'Galaxy Pine Court' and all the common amenities and facilities in the project promised to the Complainants as per the Exbt. A2 agreement executed with them, **within 6 months** from the date of receipt of this order. In the event of failure to comply with this direction, this Authority shall be constrained to initiate penal action against the Respondents, as provided under Section 63 of the Real Estate (Regulation & Development) Act, 2016.

2) The Respondents No. 1& 2/Promoters shall pay to the Complainant, simple interest @ 17% per annum, (a)for Rs.



21,48,482/-, the amount paid before 30/04/2016, the promised date of completion and handing over, for every month from 01/05/2016 till the actual date of handing over possession of apartment to the Complainant and (b) for the amounts paid after 30/04/2016, from the date of each payment as mentioned in the table inserted above in para 17 till the date of handing over possession of the apartment to the complainant.

3) If the Respondents fail to pay the aforesaid amount of interest as directed above, within a period of 60 days from the date of receipt of this order, the Complainant are at liberty to recover the amount from the above Respondents and their assets by executing this decree in accordance with the Real Estate (Regulation & Development) Act and Rules.

Sd/-
Preetha P Menon
Member

Sd/-
P H Kurian
Chairman

/True Copy/Forwarded By/Order/



Secretary (Legal)

APPENDIX

Documents from the side of the Complainant

- Exhibit A1 : Copy of the Agreement for sale.
Exhibit A2 : Copy of the Agreement for construction.
Exhibit A3 : Copy of the final bill
Exhibit A4 series : Copy of the payment receipts

Documents from the side of the Respondents

- Exhibit B1 :Affidavit dated 24/10/2023.



